

**FY 2016 PROGRAM REVIEW REPORT
MISSOURI'S UNDERGROUND STORAGE TANK PROGRAM
CORRECTIVE ACTION COMPONENT**

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**United States Environmental Protection Agency
Region 7
Air & Waste Management Division
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I. Executive Summary

The U.S. Environmental Protection Agency (EPA) approved, pursuant to 40 C.F.R. Part 281, the state of Missouri's application for Underground Storage Tank (UST) state program approval (SPA) on September 21, 2004. The EPA is required to "assess the state administration and enforcement of the underground storage tank program on a continuing basis."¹ The EPA also provides federal grant funding to Missouri to assist with implementation of the state program. As a result, the EPA reviews the program in a cycle of one component per year. The components include:

- 1) Inspection & Enforcement
- 2) Corrective Action
- 3) Closure
- 4) Cost Recovery

Purpose

The purpose of this program review is to report on the corrective action component of Missouri's UST program. The primary focus of this program review was to follow-up on the findings from the EPA's 2012 program review report, which covered Leaking Underground Storage Tank (LUST) corrective action, particularly in light of delays at sites with the elevated risk of exposures and off-site impacts. 40 C.F.R. Part 281 and its preamble stress that the overarching goal of a UST program must be the maximum protection against threats to human health and the environment. Baseline information was obtained from previous program reviews and normal programmatic interactions with the involved state organizations; namely the Missouri Department of Natural Resources (MDNR) and the Missouri Petroleum Storage Tank Insurance Fund (PSTIF).

The findings disclosed by this review and detailed herein indicate that the state of Missouri LUST Program, Corrective Action Component has significant problems affecting the implementation of the underground storage tank clean-up program, including at sites where people have been exposed to petroleum vapors that have migrated into their homes.

The result is that the state is not implementing the program in compliance with the "no less stringent" criteria required for program approval (including timeliness of investigation, corrective action, and financial responsibility²) or with state law, particularly with respect to the operation of the financial responsibility (FR) mechanism when PSTIF is funding investigations or cleanups. Based upon our program review, the findings can be summarized as follows:

- While Missouri is closing LUST sites each year, Missouri is failing to take timely action at some sites with elevated exposure risks off-site and prioritize these higher-risk cases that require more urgent attention to protect public health and the environment.
- The file review found programmatic delays include:
 - The state too often allows responsible parties too long to investigate, remediate, and complete projects. Investigation and remediation activities are often done in piecemeal fashion, drawn out over unnecessarily long periods of time.

¹ 40 C.F.R. § 281.24 requires that a state's application for SPA must include a Memorandum of Agreement (MOA), and the MOA must contain a provision for EPA oversight. The Missouri oversight provision is in Section III of the MOA.

² See 40 C.F.R. §§ 281.34-35 and 281.37.

- MDNR needs improvement in tracking project progression and exercising its enforcement authority when necessary.
- MDNR Tanks Section is short-staffed and lacking in key disciplines, which limits its ability to address inefficiencies, high-risk sites, and pushback from opposing parties.
- Though Missouri laws, regulations, and agreements sufficiently delineate the roles and responsibilities of PSTIF and MDNR, PSTIF regularly becomes involved with technical decisions regarding the scope and nature of the cleanup required by MDNR. Based upon our understanding of the roles, PSTIF's participation in the technical scope of characterization and cleanup work being performed at individual projects exceeds its statutory authority. This causes the EPA to question whether the state's FR mechanism is meeting its obligation to provide the availability of funds for taking the corrective action required by MDNR, particularly at sites with a heightened risk of exposures and off-site impacts.
- Organizational challenges include:
 - MDNR must make an annual funding request to the PSTIF Board for a significant portion of the funds required to run the tanks program. At two fall 2016 meetings, the PSTIF Board tabled MDNR's funding request of \$1.38 million until the draft of this program review report was issued, and then denied MDNR's request for funding to add staff.
 - It is unclear how the PSTIF Board is accountable to other parts of the Missouri state government for ensuring the Fund operates within the parameters of the state law that established the Fund. The Missouri State Auditor last performed a management audit in 2011, and based on our program review, it appears the PSTIF Board largely dismissed the audit recommendations.

Summary

Based upon the program review, Missouri's program components (including the SPA and FR mechanism) operate in a manner that results in ineffective and inefficient environmental performance, specifically unnecessarily greater risk to the public health and environment at sites with complaints and off-site exposures. As a result, the state agencies responsible for the UST program are not functioning together to meet the intent of the SPA, the federal law, or the requirements of state law. This is an inefficient use of the federal grant dollars that partially fund the state's program. Prompt funding at higher risk sites with off-site impacts is the EPA's primary concern because lack thereof causes the greatest threat of exposure to the public.

This is exemplified by a matter in Kansas City, Zill, LLC, where people complained of periodic exposure to vapor intrusion from gasoline caused by leaking USTs. In January 2015, MDNR issued a Declaration of a Hazardous Substance Emergency requiring five remedial actions to end the emergency. When the RP did not perform the work, MDNR referred the case to the Missouri Attorney General which filed an action in Jackson County Circuit court. The responsible party, with PSTIF's financial backing, continues to contest liability in the Circuit Court of Jackson County, Missouri.³ In effect, two State agencies are in litigation against each other in a state court, while investigation is incomplete, no clean-up action is taking place and members of the public continue to be threatened with exposure to gasoline vapors in their homes.

³ *State of Missouri ex rel. Chris Koster Attorney General, and the Missouri Department of Natural Resources v. Zill, LLC*, Case No. 1516-CV16811 (Cir. Ct. Jackson County, Mo. filed Aug. 12, 2015).

These findings are discussed in greater detail within this program review report. The EPA is strongly encouraging Missouri to promptly address these findings. The EPA is prepared to work with Missouri to achieve an acceptable level of environmental performance in light of the upcoming re-SPA process in late 2018.

II. Background Information

The EPA has the authority to approve or disapprove a state UST program to operate in lieu of the federal UST program pursuant to 40 C.F.R. Part 281. The state program must include specific elements of a UST program (new systems, upgrading systems, general operating requirements, release detection, release investigation/confirmation/reporting, UST out-of-service/closure, release response and corrective action, financial responsibility, and operator training) and demonstrate that program elements are no less stringent than federal criteria and that adequate enforcement tools exist. 40 C.F.R. Part 281 and its preamble stress that the overarching goal of a UST program must be the maximum protection against threats to human health and the environment. In order to meet this goal, a UST program must be both effective (technically sound) and efficient (prompt). As emphasized in the preamble to the UST regulations, the potential for environmental damage is too great to allow the source of a release to go unidentified and unchecked.⁴

The EPA Regional Administrator has the authority under 40 C.F.R. Part 281 Subparts E and F to approve a state UST program and withdraw approval of the program. The EPA Regional Administrator also has authority under Section 1522 of the Energy Policy Act to withdraw approval of the state fund as a financial responsibility mechanism. A withdrawal or disapproval will largely be based on the program's environmental performance toward achieving the overarching goal.

A. Program Information

The EPA approved, pursuant to 40 C.F.R. Part 281, the state of Missouri's application for state program approval (SPA) on September 21, 2004. On April 13, 2004, the state of Missouri and the United States Environmental Protection Agency entered into a Memorandum of Agreement (MOA) concerning the UST program. The SPA and the MOA established state performance methodologies, criteria and goals and a framework for cooperation between the EPA and the state of Missouri. Section III of the MOA stipulates that the EPA "will assess the state administration and enforcement of the underground storage tank program on a continuing basis." The purpose of this document is to report on select components of the state of Missouri's UST program. In the SPA (Appendix 4), the state of Missouri stated commitments to the following objectives (among others) related to this review:

- Provide for Release Reporting, Investigation and Confirmation Requirements
- Provide for Release Response and Corrective Action Requirements
- Provide for UST Out-of-Service and Closure Requirements
- Provide for Financial Responsibility Requirements

⁴ 53 Fed. Reg. 37082, 37170 (September 23, 1988).

B. State Agency Information

MDNR

The Missouri UST program was certified by the Missouri Attorney General's Office on June 26, 2003, approved by the Governor on July 28, 2003, and state program approval was granted by the EPA via publication in the Federal Register⁵ on September 21, 2004. The agency charged with operating the state UST program is MDNR, which is headquartered in Jefferson City, Missouri. At the time of this review, responsibilities rested within the Tanks Section of the Division of Environmental Quality.

Missouri law governing the use of underground storage tank systems is found primarily in Chapter 319.100-139 RSMo and in Title 10, Division 26 of the corresponding MDNR regulations. The regulations govern the organization of the tanks program, the technical regulations, the financial responsibility requirements, administrative penalty authorities, and provisions related to above ground storage tanks.

PSTIF

The PSTIF was established as a mechanism for providing FR for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks. The Missouri law governing PSTIF is found in Chapter 319.100-139 of the Revised Statutes of Missouri and in Title 10, Division 100 of the corresponding regulations. These regulations govern the organization of the PSTIF, provide relevant definitions, provide for assessment of transport load fees, describe participation requirements, lay out the claims process, and provide for UST operator training.

The general administration and operation of PSTIF (a "Type III" state agency) is vested in a board of eleven trustees. Eight of these board members are individuals appointed by the Governor with advice and consent of the state senate. Six of them are required to be representative of UST owners or operators, financial institutions, and/or the insurance industry. Two must be citizens with no connection to the petroleum industry. The remaining three board members come from state executive agencies: MDNR, the Missouri Department of Agriculture, and the Missouri Office of Administration.⁶ At the time of this program review, it appeared that the terms of most of the Board members have expired but those appointees are still performing their duties. Administrative management consists of an Executive Director (Ms. Carol Eighmey) and an administrative assistant. PSTIF exists within MDNR organizationally, but the PSTIF Board reports to the Governor rather than the MDNR Director. Most of the Fund's staff is comprised of contract employees (Williams and Company, Inc. of Jefferson City, Missouri) filling the role of claim adjusters. Approximately 80% of tank systems in Missouri utilize PSTIF as an FR mechanism.

III. Previous Recommendations and Program Review Process

The EPA Region 7 has established a state program review process whereby the review is broken into four segments (Inspection and Enforcement, Corrective Action, Closure, and Cost Recovery) over a four-year time period. The latest full cycle commenced in 2011 and was completed in 2014. Previous to that, the corrective action component was reviewed in 2004. The 2011-2014 cycle of component reviews

⁵ 69 Fed. Reg. 56363 (September 21, 2004).

⁶ 10 CSR 100-1.010(2).

included in-depth, comprehensive reviews of the program components. Much of the program component material has not changed significantly over time. In an effort to streamline the program component reviews going into the future, the 2011 to 2014 program component reviews will be used as baseline reviews.

Previous Recommendations

The review in 2004, which was less extensive than this review, recommended more advanced project management and corrective action technical training for MDNR staff. In addition, the 2004 review concluded that *“PSTIF frequently intervenes in cleanup decisions (driven by a cost perspective) and that has resulted in delay at certain sites.”* On this point, the 2012 findings were consistent with the 2004 findings.

However, the 2012 review, fully reported in *“FY 2012 Review of Missouri’s Underground Storage Tank Program – Corrective Action Component,”* February 6, 2013, found additional issues as summarized below:

- Poor communication and working relationship amongst the involved parties (MDNR, PSTIF, consultant, owner/operator, responsible party)
- A deficit of LUST technical knowledge (experienced engineers, geologists, etc.) amongst MDNR personnel overseeing LUST projects
- A lack of appropriate enforcement actions and/or follow up to spur timely corrective action
- Less than clear guidance on Risk-Based Corrective Action (RBCA)

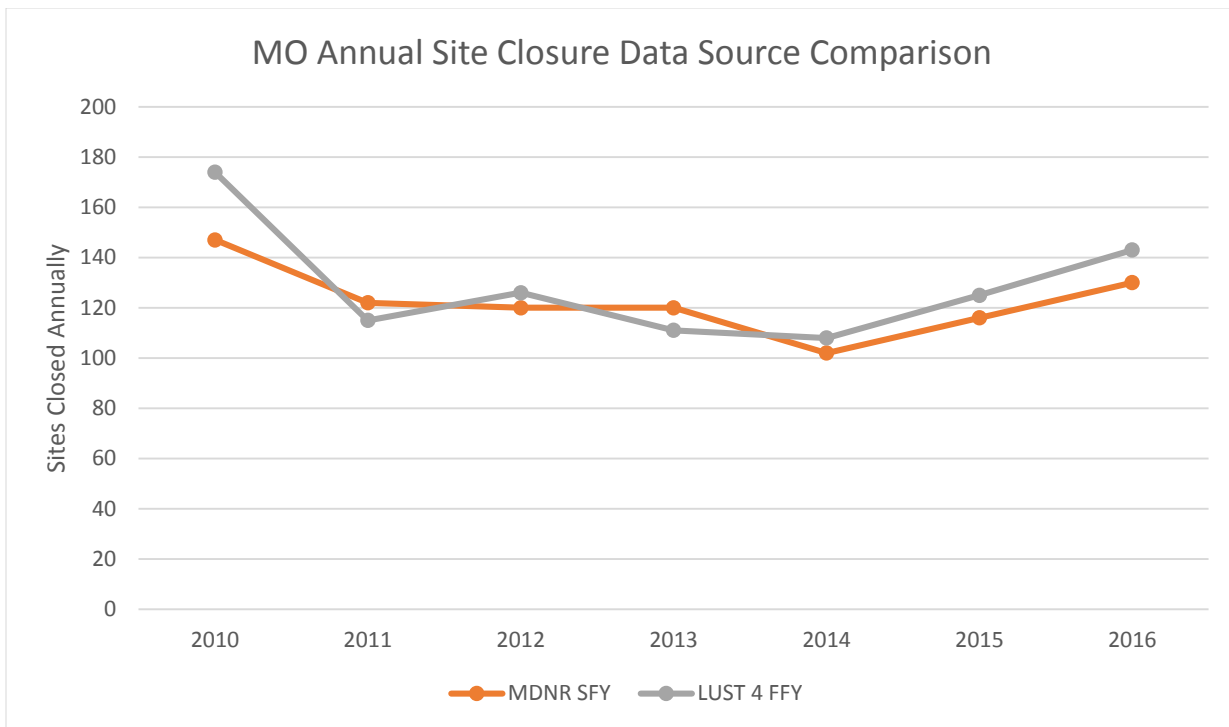
The 2012 review included the following language in its conclusions:

“These challenges currently cause inefficiencies in the program and are the source communication issues, delays, derision and animosity amongst the parties involved. These problems certainly contribute to the backlog of LUST corrective action projects in the State of Missouri and the average age of the projects in that backlog.

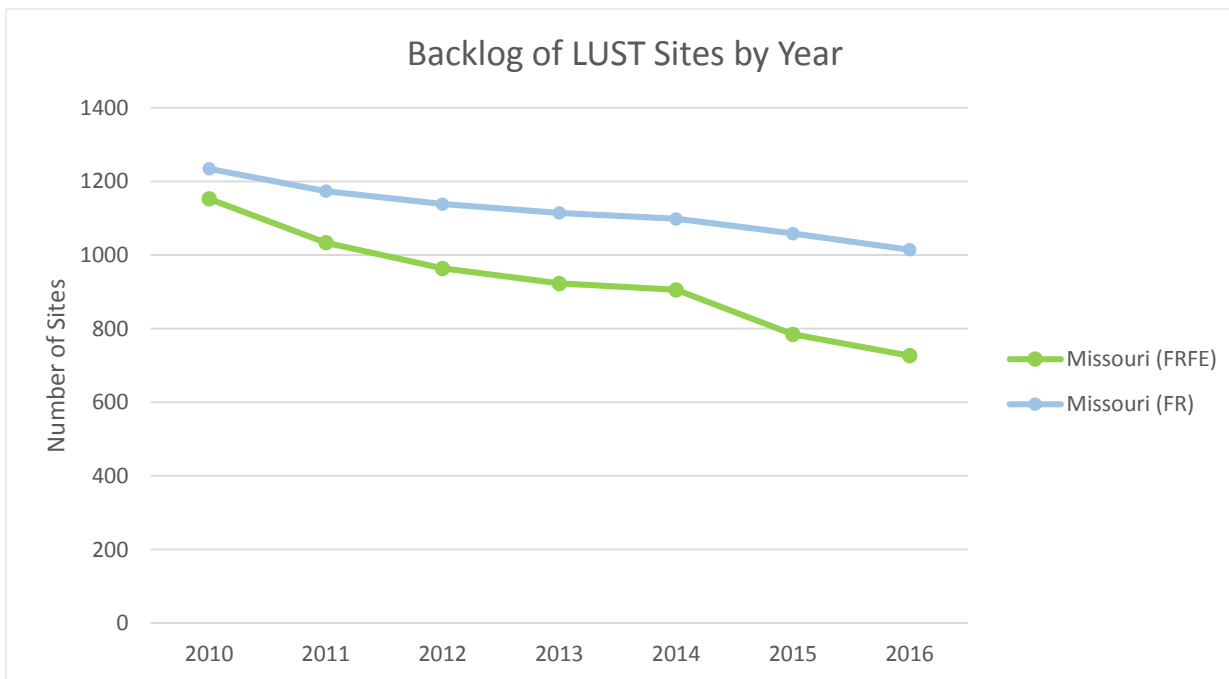
However, at this time the USEPA is not prepared to identify these problems as points of non-compliance with the SPA. If these problems are left unsolved and allowed to deteriorate over time, they will continue to worsen program conditions and may result in non-compliance in the future.”⁷

Over the past seven years, MDNR has continued to close and reduce the backlog of LUST sites in Missouri.

⁷ Page 26 of 2012 Program Review Report



Source: MDNR Tanks Section Data and LUST 4 Reporting Data



Source: MDNR Tanks Section and Fund Soundness Reporting Data

FR=Federally Regulated FRFE=Federally Regulated, Fund Eligible

Such performance numbers do not tell the whole story and are not the sole criteria by which the EPA must judge a state program's environmental performance. Availability of cleanup funds, whether FR funds or not, and the timeliness/effectiveness of responses to LUST releases, particularly at high-risk sites with off-site impacts and exposures, must also be considered. The FY2016 review is a more in-depth program review because ongoing issues between the state agencies continue and appear to have resulted in some releases not being timely or adequately addressed, resulting in citizens potentially being exposed to vapors in their homes.

Observations Since 2012 Program Review

Over the past four years, MDNR has made improvements to its RBCA policies/guidance and its enforcement system. Hence, these are touched upon below but were not a primary focus of this review. Over those same four years, the EPA has not seen significant improvements to the communication and working relationship amongst the involved parties or the technical knowledge of MDNR staff. In fact, the EPA's monitoring of these two findings over the past four years has led the agency to expand its concern to other program issues connected with the findings in 2012, particularly because they have been magnified at sites where there are complaints of odors and exposures to the public. These issues include, but are not limited to, adequate and prompt protection of human health and the environment, efficiency and effectiveness of the LUST site investigation/closure process, and the operation of state agencies responsible for administering the program and staff resources. As a result, this review focuses on areas where these programmatic problems continue.

2016 Program Review Process

This program review was performed within the parameters established by the EPA's "*Program Review Guidance, USEPA, Region 7*," October, 2013, and guided by "*Appendix 2 – Program Review Decision Criteria*" included therein.

The EPA Review Team included:

- Douglas Drouare Lead Program Reviewer
- Raymond Bosch Program Reviewer
- Wilfredo Rosado-Chaparro Program Reviewer
- Heather Collins-Allen Record Control and Technical QA/QC

Data was collected and reviewed from a variety of sources. These included the following:

- Data from the 2012 program review
- Data collected during regular interactions between Missouri and the EPA
- Interviews with MDNR management
- Interviews with MDNR project managers
- MDNR project file reviews
- Interviews with PSTIF management
- PSTIF project file reviews
- Interviews with consultants doing LUST work in Missouri

On June 9, 2016, the EPA staff met with MDNR management/counsel staff. Attendees included:

- Mr. Ken Koon Tanks Section Chief
- Mr. Steve Sturgess Director, Hazardous Waste Program
- Mr. Aaron Schmidt Deputy Director, Division of Environmental Quality

- Ms. Leanne Tippet Mosby Director, Division of Environmental Quality
- Mr. Marty Miller General Counsel's Office
- Mr. Don Willoh General Counsel's Office

On June 28 through July 1, 2016, the EPA staff met with MDNR Tanks Section staff supervisors and project management staff. Attendees included:

- Ms. Laura Luther Staff Supervisor
- Mr. Chris Veit Staff Supervisor
- Mr. Daniel Scollan Environmental Specialist
- Ms. Valerie Garrett Environmental Scientist
- Ms. Vickie Olive Environmental Specialist
- Mr. Steve Lang Environmental Engineer
- Mr. Vince Henry Environmental Specialist
- Mr. David Walchshauser Environmental Specialist
- Mr. Justin Buckler Environmental Specialist
- Mr. Hashim Mukhtar Environmental Specialist

On August 9 and 10, 2016, the EPA staff met with PSTIF management. Attendees included:

- Ms. Carol Eighmey Executive Director
- Mr. Dave Walters Williams and Company (Claims Management Contractor)

The files reviewed are included in Appendix 1, Tables 1 and 2. Both MDNR and PSTIF were able to suggest files for the EPA to review. The EPA likewise requested some specific files. Variations of the site names may exist in MDNR and PSTIF records. At the time for review, PSTIF was the FR mechanism for the funding of investigation or cleanup on the sites reviewed.

The EPA interviewed several consultants that perform LUST work in Missouri, because they are important to the process of cleaning up UST releases. These conversations occurred via telephone.

Additional sources of information for this program review are found in the Appendices.

IV. EPA's Findings

A. Programmatic Management Factors Causing Delayed Cleanups

It is apparent that a number of attempts were made since the 2012 Program review to improve programmatic management. A number of deficiencies remain. Missouri is closing LUST sites each year as reported to the EPA in LUST 4 and annual fund soundness reports (see Section III). However, this achievement does not outweigh the fact that due to programmatic inefficiencies, too many higher-risk sites are taking longer than necessary to characterize and cleanup. Examples of higher risk sites include but are not limited to sites where free product is observed, exposure risks are elevated due to vapors or water contamination, contamination is migrating off-site, utility conduit corridors are impacted, and an emergency response is required. Inefficiencies lead to delays, wasted financial resources (private, state and federal) and increased exposure risk to the environment and public health. Environmental performance, measured in part by efficiency and effectiveness of cleanups, are equally or more important, especially at sites with high-risk of exposure and off-site impacts, than overall program performance numbers.

Improvements

- MDNR has made improvements to its RBCA system. These improvements included:
 - Revised its RBCA guidance document to a 2013 standard
 - Passed supporting regulations and statutes
 - Performed outreach to the regulated community via updating its web page, mailings, and public presentations
 - Issued necessary revisions and errata over time
 - Generated applicable template documents
 - Added clarifications and supporting information related to restrictive covenants and activity use limitations
 - Revised cleanup criteria numbers to modern standards
 - Adopted its own vapor intrusion protocol

MDNR acknowledges that continued refinements and outreach training for the regulated community and consultants are needed.

- MDNR introduced a project activity tracking system that gives notice to the Tanks Section Chief when there has been no known activity at a site for over 90 days. However, PSTIF requires a 30-day response time for its contractor deliverables. PSTIF also makes a strong effort to maintain communications with claimants and their consultants.
- MDNR acknowledged that historically it has not always taken timely enforcement actions (see Appendix 12). MDNR has recently been more timely with enforcement, increasing the frequency with which it uses its enforcement tools. MDNR reported that the processing of reports and enforcement documents is more efficient.
- Missouri developed a “Dispute Resolution” process after the EPA’s 2012 program review for sites where PSTIF and MDNR disagreed on the scope of work. This reportedly resulted in a number of sites moving forward. Based upon the program review, it has not been effective in all cases, even some with off-site impacts and greater potential for human exposure.

The EPA reviewed numerous files where projects languished for years with no communications or enforcement activity. These largely occurred in the 1990’s and early 2000’s. It was apparent from review of project files, as described in this report, that Missouri’s improvements have been unable to overcome some of the challenges summarized below.

Deficiencies

Incremental Project Management and Availability of Funds

Projects move along slowly, in some cases stalling completely, rather than in a manner that provides maximum protection of public health and the environment (R009051/R009052/R009133, and others – see Appendix 1).

- Instead of tackling projects from a full-scale holistic perspective with flexible contingency plans to address changing circumstances, responsible parties and their consultants address their responsibilities in small, focused, incremental, and inflexible steps.
- Our review indicates this may be because MDNR allows responsible parties and their consultants too long to respond to MDNR's requirements for investigation. In other cases, PSTIF challenges MDNR's directions and in fact disapproves of work upfront, effectively not making funds available for corrective action. Contractors often take too long to respond and approach projects in an incremental fashion because they fear PSTIF will not reimburse them for their work.
- Of 47 project files the EPA reviewed, 26 exhibited some unnecessary condition or characteristic causing delay (see Appendix 1 – Table 1). These delays are particularly concerning given that 46 of the files exhibited the need for urgency due to greater potential for exposures and off-site impacts (see Appendix 1 – Table 2).

Allowing responsible parties to perform work incrementally regardless of the funding source, and/or PSTIF challenging the work required by MDNR (R001041, R001044, and others – see Appendix 1 – Table 1), not only draws the project timeline out but increases cleanup costs, inefficiently utilizes state oversight resources (including federal grant funding), and lengthens the duration of risk posed to the public. This is even evident at sites where complaints and actual or potential exposures continue (see Appendix 1 – Table 2), as will be highlighted later in this report.

Finding: MDNR is managing projects incrementally and allowing lengthy response/notification timelines which delay investigations and corrective actions. This is exacerbated by PSTIF challenges to MDNR, often by refusing to pay for investigations and corrective actions required by MDNR.

Staffing Deficiency

MDNR has a staffing deficiency that contributes to a “piecemeal” approach to project management and progress. It was apparent that the MDNR Tanks Section's staff is committed. However, as of the date of the meeting, the Tanks Section staff (12.5 FTE) was managing a total of 1,007 projects; an average of 81 projects per individual.

- The interviews and file reviews indicated that MDNR's project managers are sometimes reticent or not empowered to make important decisions and workload backs up further, particularly on complex projects.
- Delays are particularly evident and exacerbated when there are periods of transition such as when new clean-up criteria were being implemented, when new staff were being hired and trained, and when management or responsible party consultants changed. MDNR is insufficiently equipped to absorb these transitions, which contributes to delays.

The EPA reviewed files that also indicated PSTIF and/or consultants acted on their own accord without involving MDNR or acting against MDNR's directives (R008384, R006384, R007247 and others – see Appendix 1 – Table 1).

- Files reviewed indicate insufficient/inconsistent staffing enables this and causes PSTIF and RPs to complain that there is an appearance of, or an actual, “moving target” of cleanup criteria and a

stream of “what if” scenarios that also stretch out timeframes. The result is staff are unable to maintain the necessary familiarity with details and status of projects in order to be responsive when responsible parties, contractors, and PSTIF-hired claims adjusters do engage. Where contractors are inexperienced or their quality of work is questioned, MDNR does not have enough staff to oversee and verify the work.

- PSTIF provided a staff list of 16 contract claim managers (14 of which are scientists and engineers). PSTIF estimates 13 full-time equivalents (FTE) are currently managing approximately 785 claims for an average of 60 claims per manager.

MDNR is not only deficient in staffing numbers, but more importantly in key disciplines such as geologists and engineers. As a result, the Tanks Section must outsource geological and engineering expertise to the Missouri Department of Geology and Land Survey. The mere logistics and procedural formalities of working across departments is evident in delays on the order of months.

The staffing challenges, specifically funding for additional staff at MDNR, are discussed further in Section IV. C. below

Finding: MDNR lacks sufficient staff, and training for staff, to adequately oversee all projects, especially when projects are extended by challenges from RPs, their contractors, or PSTIF.

Enforcement

The EPA observed particularly lengthy delays (months to years) in cases where RPs, represented by PSTIF-funded legal representation, challenged MDNR directives (R008920, R008771, R009048, R009052, and R009133).

- Naturally, the involvement of legal counsel requires extra steps that increase project timelines.
- In a few recent cases, MDNR has issued compliance orders and taken other enforcement actions against responsible parties. This improvement was noted in the FY 2015 EPA program review of Missouri’s inspection and enforcement activities.⁸

The state has both order and penalty authority to address violations of the UST regulations. Chapter 319 of the Revised Statutes of Missouri makes it unlawful for any owner or operator to cause or permit any violations of the statutory provisions regulating USTs, or any standard, rule, regulation, order or permit term or condition adopted or issued pursuant to that chapter.⁹ It further provides the authority to issue an order requiring compliance within a reasonable specified time period,¹⁰ as well as the authority to assess penalties not to exceed \$10,000 per violation per day.^{11,12} The mechanics of calculating administrative

⁸ E.g., Main Street Shell Administrative Order on Consent HWP-T-16-16; see also FY 2015 EPA Program Review Report Missouri’s Underground Storage Tank Program Inspection and Enforcement Component

⁹ RSMo § 319.127(1) (2016).

¹⁰ Id.

¹¹ RSMo § 319.127(2) (2016).

¹² RSMo § 319.139(1) (2016).

penalties are laid out in the regulations.¹³ These authorities are given to MDNR, which then may choose to refer enforcement actions, such as failure to comply with a compliance order, to the Attorney General's office.¹⁴

B. Continued PSTIF Involvement in MDNR's Cleanup Program

Roles and Responsibilities

MDNR

It is the responsibility of MDNR to develop and apply UST performance standards. The Missouri statute provides:

“The department shall issue performance standards for underground storage tanks... The performance standards shall include, but shall not be limited to, design, construction, installation, piping, release detection, operation, and compatibility standards.”¹⁵

Similarly, it is MDNR's responsibility to develop and implement requirements for releases and corrective actions. The statute requires MDNR to:

“establish requirements for the reporting of any releases and corrective action taken in response to a release from an underground storage tank, including the specific quantity of a regulated substance, which if released, requires reporting and corrective action. ...The department shall use risk-based corrective standards which take into account the level of risk to public health and the environment associated with site-specific conditions and future land usage.”¹⁶

This responsibility includes determination of the extent of work necessary to investigate releases and advance particular LUST sites to closure. While RPs and their corrective action contractors/consultants must work together to devise a draft plan for advancing the investigation and closure of a LUST site, those plans and their implementation are subject to review and comment by MDNR, who may require modifications. MDNR is the implementing agency, of which the UST program is partially funded by federal grants, with the authority to determine regulatory compliance when it comes to the investigation and cleanup of LUST sites regardless of the FR mechanism or source of funds for the work.

PSTIF

Meanwhile, the PSTIF Board's responsibility is the fiduciary management of the Fund. The state statute provides:

“The board shall determine and prescribe all rules and regulations as they relate to fiduciary management of the fund, pursuant to the purposes of sections 319.100 to 319.137. **In no**

¹³ 10 CSR 26-4.080, “Administrative Penalty Assessment”

¹⁴ Such was the case in *State of Missouri ex rel. Chris Koster Attorney General, and the Missouri Department of Natural Resources v. Zill, LLC*, Case No. 1516-CV16811 (Cir. Ct. Jackson County, Mo. filed Aug. 12, 2015).

¹⁵ RSMo § 319.105(1)

¹⁶ RSMo § 319.109.

case shall the board have oversight regarding environmental cleanup standards for petroleum storage tanks.”^{17, 18} (emphasis added)

“Cleanup” is defined as “all actions necessary to investigate, contain, control, analyze, assess, treat, remediate or mitigate the risks of a petroleum release to achieve risk-based standards established by the Department of Natural Resources.”¹⁹

As such, the Fund is authorized to determine “eligible, reasonable, and necessary costs” for specified activities for reimbursement from the Fund.²⁰ To implement this authority, the Board is permitted to reject proposed costs or estimates “if, in the opinion of the board and at its sole discretion, such costs are ineligible, unreasonable, or unnecessary.” The regulations provide that the Board retains authority to make a determination concerning eligibility, including “whether the costs incurred were necessary to achieve the cleanup **required by the Department of Natural Resources**”²¹ (emphasis added).

State law further provides that:

- Owners and operators must **immediately** investigate and confirm all suspected releases of regulated substance requiring reporting ... within seven days **or another reasonable time period specified by the department** (emphases added).²²
- Owners and operators must conduct investigations of the release, the release site, and the surrounding area to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the groundwater if any of the following conditions exist.²³
- Owners and operators are responsible for submitting a plan **that provides for adequate protection of human health and the environment, as determined by the department**, after fulfilling the requirements for release reporting and investigation (emphasis added).²⁴

Performance of the Financial Responsibility Mechanism

Despite these relatively well-defined roles, the EPA has observed that PSTIF has declined to fund work required by MDNR on a fairly routine basis before, during, and after the characterization and cleanup stages of work. File observations indicated this occurring on a number of projects (R003271, R007846, R006621, R005550, and others – see Appendix 1). It is the observation of the EPA that the use of PSTIF’s rejection authority for controlling costs has crossed into the realm of influencing the proper and timely characterization and extent of environmental cleanup standards for specific LUST sites for which

¹⁷ RSMo § Section 319.129(13).

¹⁸ State’s Brief on Financial Responsibility Mechanisms, Particularly Involving the Participation Agreement With The Missouri Petroleum Storage Tank Insurance Fund, *State of Missouri Ex. Rel. Joshua D. Hawley, Attorney General, and the Missouri Department of Natural Resources v. Zill, LLC*, Case No. 1516-CV15811 (Cir.Ct. Jackson County, Mo., Mar. 1, 2017).

¹⁹ 10 CSR 100-2.010(8).

²⁰ 10 CSR 100-5.010(9).

²¹ 10 CSR 100-5.010(3).

²² 10 CSR 26-2.052(1)

²³ 10 CSR 26-2.078(1)

²⁴ 10 CSR 26-2.082(1)

MDNR is the agency approved by the EPA to implement the tank cleanup program.²⁵ PSTIF itself has acknowledged this involvement and both MDNR and PSTIF agree that there is a lack of understanding or acceptance of the roles and responsibilities of MDNR, PSTIF, owners, and consultants.²⁶ Notably, this brings into question the reliability and environmental performance of PSTIF as the financial responsibility mechanism funding corrective action at these sites based on the “no less stringent” criteria required for program approval (including timeliness of investigation, corrective action, and financial responsibility; see 40 C.F.R. § 281.37). More troubling to the EPA is that it appears this is most common when LUST contamination migrates off of the site and causes extensive citizen complaints of odors and vapors in their homes or businesses, lengthier threats of exposure, or actual direct exposures to the public.²⁷ This failure to stay within statutory authority has been observed in a number of ways, a few of which are described below.

- Instead of RPs’ consultants responding to MDNR’s requirements, which are intended to protect the public, consultants have to negotiate and draft multiple iterations of proposals, work plans, and reports shuffling back and forth between MDNR and PSTIF until both parties are satisfied. Consultants and MDNR stated in interviews (and the EPA’s file/data review supports) that PSTIF’s involvement in this manner causes delays at 30% to 50% of LUST projects.
- The delay of site investigations and cleanups often extends the duration of contaminant exposure to the public. Consultants are caught in the middle between what is necessary to meet MDNR requirements, and PSTIF refusing to make funds available to reimburse them for that work. PSTIF exerts this influence over time by 1) paying responsible party consultants only for work they pre-approve, 2) releasing or not recommending/referring consultants that disagree with their opinion 3) creating a climate in Missouri where LUST work is only profitable where PSTIF direction is followed. The consultants interviewed for this review asked not to be identified due to fear of business repercussions from PSTIF.
- The EPA continues to observe poor communication between the Fund and the remediation program. PSTIF claims adjustors review proposed scopes of work and predetermine technical services for which they will reimburse without MDNR’s awareness. In the case of Cassen’s Transport Company (R003694), adjustors coached consultants on how to argue the technical merits of MDNR’s demands or requirements (PSTIF internal e-mail exchange). MDNR reportedly had no knowledge of these discussions.
- In the Kennett Conoco case (R008151), PSTIF hired consultants to perform consulting, characterization, or mitigation services without MDNR’s knowledge. This also occurred at the Main Street Shell site where odor complaints and potential exposures have persisted for over a year and a half. The EPA was told during a consultant interview that PSTIF hired a second consultant at the Main Street Shell site to evaluate MDNR’s determination (and enforcement order) that extensive characterization was still required. When that contractor reported that indeed characterization had been inadequate, they were informed their services were no longer needed. PSTIF denies that it engaged a third party expert to provide an independent review of the corrective action plan.

²⁵ See EPA and PSTIF Communications (March and May 2016 RA/PSTIF Communications)

²⁶ See Appendices 11 and 12.

²⁷ See Appendix 1 – Table 2.

- File observations indicated that PSTIF acted in this manner on several occasions (R008384, R006384, R007247 and others – see Appendix 1 – Table 1). Again, PSTIF denies this. At least one consultant interviewed stated that limits of their technical and ethical expert opinions were stretched doing work in this manner.
- These dynamics were more pronounced on sites where free product was present, plume stability is in question, or when third-party complaints and actual or threatened exposures are present (see Appendix 1 – Table 2). File observations indicated this on a number of occasions (R009051/R009052/R009133, and others – see Appendix 1). These cases pose a greater potential for high cleanup costs and third party liability.
- PSTIF staff stated during the interviews that LUST sites with the most potential for redevelopment do require and justify more urgent attention than other sites.²⁸ PSTIF management has expressed concern to the EPA management that MDNR delays the process on these sites by not issuing no further action letters as soon as PSTIF believes it is appropriate. While the EPA does not disagree that this is an important factor and hopeful outcome for contaminated sites, the intent of the UST laws and regulations is for the protection of the public health and the environment. Therefore, the state should direct the greatest urgency, attention, and resources to the sites where it knows there are real or significant threats of public exposures and off-site impacts.
- PSTIF controls a significant portion of the funding for the state program. It is able to hire more contract claim managers with higher levels of technical qualification than MDNR is able to hire technical staff. It is able to fund training for its contractors while being party to a funding process that limits funding for MDNR to conduct training. Therefore, it is able to interact directly and more frequently at the LUST sites with contractors. A number of contractors that choose not to heed this influence believe they are limited in their opportunities to work in Missouri or have voluntarily decided not to. This has reduced the pool of technical contractors which appears to have contributed to a slower pace of characterization and cleanup. Although responsible parties technically hire their consultants, PSTIF does provide lists of consultants for them to consider.

PSTIF acknowledges the extent of the technical involvement of its contract adjusters. During interviews, PSTIF management stated they believe it is the Fund's statutory duty to protect its insured against claims that are ineligible or for which they allege the RP is not the source of the leak. Therefore, they believe it is their duty to question the necessity and limit characterization and cleanup activities routinely, even at sites where petroleum releases have resulted in complaints and exposures to people in adjoining properties and neighborhoods. This view puts two state entities in direct opposition. MDNR's only leverage to protect the public health and environment where there is a dispute over technical merit is legal enforcement authority.

Uncertainty regarding the availability of funds for timely corrective actions and technical overreach by PSTIF are clearly demonstrated in LUST projects like Main Street Shell (MDNR R009051, R009052 and R009133 – three different releases in less than a year with petroleum vapors evident in homes across three city blocks), and Zill (MDNR R008661, R008771 and R009048). PSTIF utilized funds for legal defense against MDNR's orders for performing work at these sites. Please see Section V of this report for further discussion regarding these two sites.

²⁸ PSTIF stated in comments to the draft report that the statement was “at sites where there is no viable responsible party – it is imperative that prompt responses be provided by both MDNR and PSTIF if/when an interested buyer or developer comes along and there is suddenly an incentive for someone to do or complete an unfinished cleanup.”

In addition, PSTIF staff have alleged that legal fees count toward the \$1,000,000/release FR cap. In fact, PSTIF's "Participation Agreement" with policy holders specifically counts legal defense costs against the coverage cap.²⁹ This clearly contradicts federal UST regulations and the state regulations approved by the EPA as part of SPA.^{30, 31} PSTIF's correction of this point is important for re-SPA.

Finding: The EPA believes that Missouri laws, regulations, and agreements sufficiently delineate the roles and authorities of PSTIF and MDNR. In state law and in the EPA's State Program Approval, MDNR is the authority to establish standards for corrective actions, yet PSTIF interjects itself regularly into that role. It is obvious the same clarity of roles does not exist between PSTIF and MDNR. This results in unacceptable environmental performance at higher-risk sites. Finally, the PSTIF "Participation Agreement" is not consistent with state or federal UST Regulations with respect to legal fees and the cap on liability coverage.

C. Organizational Challenges

PSTIF Organization

The PSTIF was established in 1989 pursuant to Chapter 319.100-139 RSMo and under Title 10, Division 100 of the corresponding regulations. PSTIF's mission, as stated on its website, is to "... work to ensure that monies from the Fund are effectively used to clean up the environment; that Fund participants receive timely, professional services; and that the Fund's resources are economically used in order to benefit the maximum number of Missourians."³²

The organizational unit responsible for managing the Fund is administratively located within MDNR as a type III state agency, but is accountable to a board of trustees rather than the MDNR Director. The Board of Trustees, formed in 1996, is appointed by and reports to the Governor. The general administration and proper operation of the Fund is vested in the Board.³³ At this time, the terms of five of the eight public (non-executive branch) members were expired, including the Board chairman. In addition, one of the two seats representing the general public was vacant. Missouri law does not proscribe the process for replacement of trustees once terms expire.

Administrative management consists of an Executive Director and an office assistant. The PSTIF Board receives infrequent management audits performed by the Missouri State Auditor, most recently in 2011,³⁴ however, the Board does not appear to be under any obligation to implement the Missouri State Auditor's recommendations. For example:

The auditor recommended "...The Board should work with the DNR to ensure timely closure and final payment of claims ...

²⁹ See Section I.1.c. and d. on page 3 of the Participation Agreement as well as "Limits of Insurance" Section III.3.d. on page 6 of the Missouri Petroleum Storage Tank Insurance Fund's Underground Storage Tank Participation Agreement.

³⁰ 40 C.F.R. § 280.93(g); 10 CSR 26-3.093

³¹ State's Brief on Financial Responsibility Mechanisms, Particularly Involving the Participation Agreement with The Missouri Petroleum Storage Tank Insurance Fund, *State of Missouri Ex. Rel. Joshua D. Hawley, Attorney General, and the Missouri Department of Natural Resources v. Zill, LLC*, Case No. 1516-CV16811 (Cir.Ct. Jackson County, Mo., Mar. 1, 2017).

³² <http://www.pstif.org/board.html>

³³ Chapter 319.129.1.4 RSMo

³⁴ <http://app.auditor.mo.gov/Repository/Press/2011-34.htm>

The PSTIF Board provided the following written response:

The PSTIF Board of Trustees is committed to assuring that adequate funds are available to fund all claims as they are submitted, while at the same time keeping fees as low as possible and collecting the minimum amount of money necessary to carry out its responsibilities. The Board believes its 13-year history demonstrates it has successfully balanced these competing goals.

Regarding the transport load fee and claim resolution, the Board agrees that if PSTIF-eligible responsible parties would complete their cleanups more quickly, and file reimbursement requests with the PSTIF more quickly, the cash balance in the Trust Fund would decrease more quickly, thereby allowing Trustees to consider increasing the transport load fee to rebuild the reserves that will be necessary for future claims and for paying "runout" after the scheduled 2020 "sunset date" of the program. The Board has a long history of initiating actions and dialogue to try and stimulate quicker cleanups.

However, the Board has no statutory authority to compel anyone to initiate a cleanup or complete cleanup activities on any specific timeframe. State law grants to other agencies and offices of state government the authority to compel actions or set deadlines for action. The PSTIF regularly communicates and collaborates with those other agencies."

The PSTIF Board currently contracts with a private company, Williams & Company Consulting, Inc. (according to its website) to provide third party administration services, including receiving and processing applications for insurance coverage, sending renewal notices, receiving and processing claims, and other accounting and record keeping services. Williams staff listed at the time of the review included 16 claims managers (PSTIF reports 13 "FTE" managing claims for the Board). Of these, eight had geology or geoscience degrees, three were engineers, three were environmental scientists, and two had non-science backgrounds.

MDNR Organization

The agency for Missouri with the authority for implementing SPA is MDNR. MDNR's mission is to protect the air, land and water; preserve our unique natural and historic places; and provide recreational and learning opportunities for everyone. MDNR is led by a director who is appointed by and accountable to the Governor. The MDNR Tanks Section is located in the Hazardous Waste Program in the Division of Environmental Quality.

Conflict

Other states have their prevention and remedial programs and the state FR mechanism administration housed and managed separately. The EPA has observed some ongoing communication issues and conflicts between these elements in Missouri. The EPA's observation is that this organizational arrangement, in addition to the delays caused in remediating LUST sites as described herein, detracts from the successful environmental performance of the program, particularly on high-risk sites. The review indicated that:

- PSTIF partially funds the MDNR Tanks program (in addition to federal grants). PSTIF has discretion in its MDNR funding decisions. Annually, the MDNR Director must appear before the PSTIF Board and request funding to run the state's tanks program for the upcoming fiscal year.

MDNR requested funding for its upcoming fiscal year at the PSTIF September 2016 board meeting. PSTIF tabled the discussion pending the release of the draft of this report by the EPA.³⁵ At the subsequent meeting in November 2016, PSTIF denied funding to hire additional MDNR tanks program staff. Historically, PSTIF funding has accounted for approximately 30% to 40% of the tanks program's total funding (see data presented in Appendix 19). It is a natural conflict of interest for an organization directed by a board dominated by the regulated community to determine the funding of the organization that regulates that community. Effectively, this can have a major influence on the level/quantity/degree/quality of that regulatory activity. By controlling program funding over time, PSTIF is able to exert influence on the operations, staffing, and training of MDNR.

- PSTIF directs contractors to collect site data not requested by MDNR, in order to dispute MDNR's findings. In some cases, PSTIF utilizes its organizational separation to delay, limit, or withhold information about releases or characterization from MDNR (see Appendix 1 – Table 1).
- PSTIF continues to be given a voice for the discussion of numerous issues that appear to be outside the limits of the statute under which it was established. This includes but is not limited to negotiations for Energy Policy Act compliance or accommodations, establishing RBCA criteria and guidance, compiling technical outreach materials, and redrafting programmatic legislation. A recent example is that the PSTIF Executive Director commented at a hearing “on behalf of PSTIF insured tank owners and operators” on Missouri’s new state UST proposed rules that would bring the state into compliance with the Energy Policy Act. Due to the organizational structure described above, MDNR appears to be unable or unwilling to restrict PSTIF’s involvement in the development of standards despite the state law.
- PSTIF also uses its resources and influence to further the aims of outside trade organizations. It is natural that the PSTIF Board, since it consists of mostly industry representatives, would have representatives that are members of the Missouri Petroleum Marketers and Convenience Store Association (MPCA). The MPCA’s stated purpose is to advance the legislative and regulatory interest of its members. The PSTIF Board and staff have an associate membership in the MPCA. At the March 21, 2017, PSTIF Advisory Committee meeting, the MPCA executive director nominated the new committee chairman and vice chairman without opposing nominations.³⁶
- MDNR and PSTIF did make an attempt to address part of the findings in the EPA’s 2012 program review by developing what they termed the Dispute Resolution (DR) process. This process was a plan for the Executive Director of PSTIF and the Deputy Director of MDNR to resolve any impasse between MDNR’s technical staff and the PSTIF representative. This process was utilized on a few occasions and resolved conflicts on an unknown number of cases. It has not resolved unacceptable delays on at least 26 of the higher risk sites that the EPA reviewed and has not improved communications between the Fund and remediation programs since the EPA’s 2012 program review.

Finding: Organizational conflicts of interest, primarily the discretion the PSTIF Board has in funding MDNR’s tanks program, contribute to the delays in funding investigations and corrective actions at many Missouri LUST sites.

³⁵ See meeting minutes

³⁶ See draft meeting minutes. These are routinely posted to PSTIF’s website (<http://www.pstif.org/about-pstif/board-of-trustees/minutes-of-past-meetings/2017-meetings/>), but at the time this report was finalized, the March 21, 2017, minutes had not been posted.

V. Cases Highlighted

Two projects, where odor vapor complaints and threats of exposures continue, typify many of the issues described above:

Main Street Shell (R009051, R009052 & R009133)

Three releases occurred from deficient UST systems at this site from May 2015 to April 2016. The contaminant plume migrated off of the site and resulted in vapor migration into residences and complaints of vapors in homes for months. The responsible party was slow to respond to regulatory requirements. More than a year passed and the responsible party had still not fully evaluated potential exposure routes and the degree/extent of impacts. The EPA engaged with MDNR and the RP in the spring of 2016 and considered issuing an order. MDNR then issued a letter order that compelled the RP to present an acceptable remedial action plan and begin implementation in the fall of 2016. Nearly a year and a half after the first release, there is a contaminant plume of indeterminate characteristics, severity, size, and risk under at least three residential city blocks, and petroleum vapors are still intermittently migrating through public utilities into people's homes. A timeline of events follows:

- April-May 2015: Neighborhood complaints of vapors from utilities. MDNR emergency response team and city responded. MDNR identified Main Street Shell as probable source based on proximity and review of site records. Tank 3 taken out of service by the owner/operator.
- May 2015: MDNR emergency response staff, contractors and representatives of the city responded to vapor complaints from residents on Walnut Street (one block east of Main Street Shell). Area along sewer line in center of Walnut Street excavated to evaluate odors coming from sewer. Gasoline free product discovered flowing into excavation. Hundreds of gallons of gasoline were recovered.
- May 2015: Channel 41 news report. <http://www.kshb.com/news/local-news/investigations/old-hyde-park-neighborhood-traces-mystery-smell-in-homes-to-leak-at-gas-station>
- October 2015: MDNR and Main Street Shell consultants prepared reports on their investigations.
- November 2015: MDNR issued a letter to Main Street Shell directing actions to be taken.
- December 2015: MDNR issued a Letter of Warning and Notice of Violation for failure to respond appropriately.
- January 2016: Channel 41 news report. <http://www.kshb.com/news/local-news/investigations/gasoline-smell-problem-plaguing-kansas-city-mo-neighborhood-remains-unresolved-after-9-months>
- March 2016: The EPA issued a letter to PSTIF expressing concerns over delays at this and other sites.
- April 2016: Main Street Shell conducted tank tightness testing. Multiple system failures were identified. MDNR issued owner/operator a Hazardous Substance Emergency Declaration Directive

requiring the permanent closure of the three tank systems in question. MDNR red tagged tanks out-of-service. The EPA inspected Main Street Shell tank systems, operations and records.

- May 2016: Owner/operator removed tank systems in question from the ground and replaced them with new systems.
- June 2016: MDNR issued a Notice of Violation to tank owner for failure to pursue appropriate investigation, remedial and corrective actions.
- July 2016: MDNR issued a Notice and Order to Abate Violations for failure to follow up on Notice of Violation.
- Throughout 2016: PSTIF negotiated individual liability settlements with impacted property owners. Four homeowners had reported noting gasoline vapors in their homes at one time or another.
- September 2016: MDNR entered into administrative order on consent with responsible party to pursue investigation and cleanup.
- January 2017: Responsible party's consultant began implementation of large scale investigation and corrective action plan agreed upon with the MDNR.

Zill (R008661, R008771 & R009048)

Three releases occurred from deficient UST systems over a decade at this site. The earliest release on January 13, 2003 was remediated. The two subsequent releases (on January 7, 2006 and July 15, 2015) have yet to be fully characterized or remediated. The known contaminant plume spans several city blocks and has caused vapor migration into residences and places of worship. Complaints and evidence of vapors in storm sewers have been reported as recently as the fall of 2016. More than a decade has gone by since the second release was reported and the responsible party has still not fully evaluated potential exposure routes and the degree/extent of impacts. MDNR has had to take the lead utilizing limited emergency response resources and funding. Based on data provided by MDNR, more than a decade after the second release, there is a contaminant plume of indeterminate characteristics, severity, size and risk under at least three residential city blocks, and petroleum vapors are still intermittently migrating through public utilities into people's homes.

- 2003: The current owner acquired the facility.
- 2006: The first release resulted in odor complaints from residents and emergency repairs to sewer lines deemed to be the conduit of vapor migration.
- September 2006: MDNR directed the owner to perform investigation and remediation. The owner replaced tanks and discovers contamination.
- 2012 to 2015: Limited investigation and cleanup work was conducted at the site.
- November 2014 to January 2015: MDNR received several odor complaints.

- January 2015: MDNR and the City investigated sewer lines and confirmed it as the path of vapor migration. MDNR issued a Hazardous Substance Emergency Declaration with directives to responsible party.
- February 2015: The responsible party began paying for alternative housing for impacted residents.
- March 2015: The responsible party submitted work plan and it was approved by the MDNR.
- May/June 2015: The responsible party stopped paying for alternative housing for impacted residents.
- June 2015: The responsible party submitted documentation to the MDNR declaring it is not the responsible party.
- June 2015: Channel 41 news report. <http://www.kshb.com/news/local-news/investigations/neighbors-frustrated-by-gasoline-fumes-in-homes-due-to-leaky-underground-storage-tank>.
- June 2015: Channel 4 news report. <http://fox4kc.com/2015/06/24/neighbors-say-persistent-gas-smell-in-kc-neighborhood-is-impossible-to-escape-making-them-sick/>
- July 2015: The MDNR, ESP began paying for alternative housing for impacted residents.
- July 2015: Congressman Emanuel Cleaver issued a letter of concern to Governor Nixon and the EPA Administrator.
- August 2015: MDNR found confirmatory evidence of a more recent release of free product and expands investigation work to characterize site conditions/threats.
- August 2015: Channel 4 news report. <http://fox4kc.com/2015/08/12/kansas-city-community-fed-up-with-underground-gas-leak/>
- August 2015: Channel 5 news report. <http://www.fox5krbk.com/kansas-city-area-gas-station-sued-for-failing-to-clean-up-gasoline-contamination/>
- August 2015: Missouri filed suit against the responsible party. *State of Missouri ex rel. Chris Koster Attorney General, and the Missouri Department of Natural Resources v. Zill, LLC*, Case No. 1516-CV16811 (Cir. Ct. Jackson County, Mo. filed Aug. 12, 2015).
- October 2015: MDNR issued its own report that it has not found any other sources contributing to the contamination.
- September 2015: Missouri filed an injunction enjoining Zill to conduct a complete cleanup of the hazardous substance and take reasonable actions necessary to end the hazardous substance emergency. State's Application for Preliminary Injunction, *State of Missouri Ex. Rel. Chris Koster, Attorney General, and the Missouri Department of Natural Resources v. Zill, LLC*, Case No. 1516-CV15811 (Cir.Ct. Jackson County, Mo., Sept. 14, 2015).

- November 2015: MDNR repaired some sewer lines to prevent vapor intrusion to some homes. The MDNR, ESP stopped paying for alternative housing for impacted residents.
- December 2015: The owner performed a tank tightness test that identifies a leak.
- January 2016: The responsible party began free product recovery.
- April 2016: The responsible party filed action demanding jury trial.
- August 2016: Press reports that the responsible party reached a \$300,000 settlement with some impacted property owners. <http://www.kansascity.com/news/business/article96763227.html>
- October 2016: A court-ordered mediation between Missouri and the responsible party failed to reach a resolution.
- January 2018: Scheduled court date for the trial.

VI. Conclusions

Based upon the program review, Missouri's program components (including the SPA and FR mechanism) operate in a manner that results in inconsistent, ineffective, and inefficient environmental performance, specifically unnecessarily greater risk to the public health and environment at sites with complaints and off-site exposures. As a result, the state agencies responsible for the UST program are not functioning together to meet the intent of the SPA, the federal law, or the requirements of state law. This is an inefficient use of the federal grant dollars that partially fund the state's program.

Prompt funding at higher risk sites with off-site impacts is the EPA's primary concern because lack thereof causes the greatest threat of exposure to the public. While there are sufficient funds in the Missouri PSTIF for providing an FR mechanism for applicable, federally regulated and fund-eligible tanks in the state of Missouri, certainty does not exist that those funds are readily available for taking the corrective actions required by MDNR to protect the public health and the environment. This certainty must exist for any leaking UST site regardless of the source of funding for the cleanup or the FR mechanism at the time of the release. In a state program where entities are not communicating well, disagreements in work to be performed cause unacceptable delays and demand more staff time thereby inefficiently utilizing state and federal funds.

The EPA is willing to work quickly and closely with Missouri to address these concerns and findings. The EPA is hopeful to do so in advance of Missouri's anticipated application for re-approval of state program approval in late 2018, so that the state program can meet the "no less stringent" criteria for re-approval and so that PSTIF is achieving an acceptable level of environmental performance as an FR mechanism.